THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.35554 OF 1997

ORDER:

The petitioners herein are Co-operative House Building Societies. They purchased land situated Sy.No.1 of Hasmathpet village, Balanagar Mandal, Rangareddy District to an extent of 12 acres and 22 acres respectively from one Khasim Nawab Jung and Cyrus Investments Limited.

It is not in dispute that the vendors of the petitioner societies are the defendants 157 and 206 respectively in C.S.No.14 of 1958 on the file of this Court. It is also not in dispute that the land in Sy.No.1 of Hasmathpet Village was the subject-matter of C.S.No.14 of 1958, declared by this Court by Judgment and Preliminary Decree dated 28-6-1963 as Matruka property available for partition among the shareholders of Khurshed Jahi Paiga and the assignment made in favour of the petitioners by the defendant Nos. 157 and 206 in C.S.No.14 of 1958 was permitted by this Court by order dated 13-1-1988 in Application Nos.7 of 1988 and 23 of 1988.

Pursuant thereto, the petitioner societies along with 3 other similarly situated societies made applications before the Mandal Revenue Officer, Balanagar Mandal under the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short, ROR Act) for mutation in the revenue records. It appears that by that time the land in Sy.No.1 was entered in the revenue records as "Sarkari". In the circumstances, the Mandal Revenue Officer sought for the instructions from the Government for implementation of the order of this court dated 13-1-1988 in Application Nos.7 & 23 of 1988 in CS.No.14 of 1958. The Government after calling for a report from the District Collector, vide Memos dated 24-6-1989 and 25-8-1989 directed mutation in the revenue records in respect of the land in Sy.No.1 of Hasmathpet Village in favour of the petitioner societies and three

other similarly situated societies. Accordingly, the Mandal Revenue Officer in exercise of the power conferred under Section 5-A of the R.O.R. Act read with Rule 27 (4) of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989, vide proceedings dated 29-8-1989 ordered deletion of the entry "Sarkari" from the revenue records in respect of Sy.No.1 and incorporate the names of the petitioner-Societies as owners of the land in respect of Ac.12.00 and Ac.22.00 respectively.

While so, the Commissioner of Land Revenue addressed a letter dated 26.10.1989 requesting the Government to review the orders dated 24.6.1989 and 25.8.1989 on the ground that the assignment deeds in favour of the petitioner-Societies executed by one Jitendra Kumar claiming to be the G.P.A. of Nawab Kasim Nawaz were invalid and consequently the orders of this Court dated 13.1.1988 in Application Nos.7 and 23 of 1988 were not implementable. In pursuance thereof, the Government vide memo dated 30.11.1989 had withdrawn the earlier orders dated 24.6.1989 and 25.8.1989. Consequently, the District Collector by order dated 6.12.1989, suo motu revised the order of the Mandal Revenue Officer dated 29.8.1989 and restored the entry as "Sarkari" in the revenue records in respect of the land in question.

Aggrieved by the said action, the petitioners, along with other societies filed W.P.No.17697 of 1989. The said writ petition was opposed by the respondents contending that the land was never identified as belonging to late Khurshed Jahi Paiga, but the same was only Government land. It was also contended that the assignment deeds in favour of the petitioner-societies, being unregistered and in violation of the provisions of The Urban Land (Ceiling and Regulation) Act, 1976 were void.

After hearing both the parties, this Court by order dated 31.3.1995 disposed of W.P.No.17697 of 1989 holding that the order of the Government to review the entire matter was not unreasonable or

arbitrary. However this Court directed the Government to take into account all the documents relied upon by the writ petitioners and re-decide the issue after giving an adequate opportunity of being heard to all the societies.

While the said enquiry was pending, the petitioners came to know about the proceedings of the District Collector, Rangareddy district, dated 9-9-1990 purportedly made in exercise of the power conferred under Section 158 of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli, thereby accepting the title claimed by the respondents 6 and 7 herein in respect of 15 acres of land situated in Sy.No.1/1 of Hasmathpet Village under an Un-Registered Sale Deed dated 10-5-1951 executed by one Khaja Mohammed. On the basis of the said order, the Mandal Revenue Officer, Balanagar vide proceedings dated 12-12-1990 regularised the transfer in favour of the respondents 6 and 7 under Section 5-A of the R.O.R. Act, 1971.

Alleging that taking advantage of the above said proceedings, the respondents 6 and 7 were attempting to encroach upon the land belonging to the petitioner societies, the present writ petition has been filed seeking a Writ of Mandamus declaring the proceedings of the 2nd respondent dated 9-9-1990 and the consequential proceedings of the 5th respondent dated 12-12-1990 are arbitrary and illegal and accordingly set aside the same.

It is pleaded by the petitioners that though during the year 1977-78 the name of Khaja Mohammed from whom the respondents 6 and 7 claimed to have purchased the land in question was shown as pattadar in the revenue records, after enquiry the Joint Collector having found that it was a wrong entry, ordered deletion of the name of Khaja Mohammed. Against the said order, the respondent No.6 filed an Appeal/Revision before the Commissioner of Land Revenue and the same was dismissed by order dated 16-5-1987. Hence, it is not open to the 2nd respondent to reopen the issue and pass the impugned order in favour of the respondents 6 and 7. It is also

contended that since the entire Sy.No.1 in Hasmathpet Village was the subject matter of CS.No.14 of 1958 and was in the custody of the Receiver appointed by this Court, the alleged sale by Khaja Mohammed, without obtaining the permission of this Court was invalid. The further contention is that the order passed by the 2nd respondent dated 9-9-1990 directing mutation of the name of Khaja Mohammed was not only contrary to the facts borne out of the record but also without jurisdiction since the same was in violation of Section 166 (3) & (7) of A.P. (Telangana Area) Land Revenue Act, 1317 Fasli.

I have heard the learned counsel for both the parties and perused the material on record.

In the counter-affidavit filed by the Tahsildar, Balanagar Mandal, dated 13-7-2007, it is stated that in terms of the order of this Court in W.P.No.17697 of 1989, an order was passed by the Government during the pendency of this writ petition on 26-4-1999 restoring the earlier order dated 24-6-1989. However, the allegation that the impugned orders dated 9-9-1990 and 12-12-1990 were passed without notice to the petitioners has not been denied. Similarly, nothing could be placed before this Court to show that the sanction as mandated under Section 166 (3) of the Act was obtained before passing the order dated 9-9-1990.

It is to be noted that though appearance has been entered on behalf of the respondent No.6 through his counsel Sri M.V. Durga Prasad, no counter-affidavit has been filed and none appeared on his behalf when the matter is called. Despite notice, the respondent No.7 did not choose to appear. Thus, virtually, there is no contest by the respondents 6 and 7.

From the counter-affidavit of the respondent No.5, it is clear that the mutation in the revenue records in respect of the land in question, situated in Sy.No.1 of Hasmathpet Village in favour of the petitioner societies has been restored as on today.

Admittedly, the petitioner-societies were put in possession by virtue of the transfer by defendants No.157 and 206 in C.S.No.14 of 1958 in pursuance of the permissions granted by this Court in Application Nos.7 and 23 of 1988. Subsequently, mutation in their favour in the revenue records was directed by the Government by order dated 24-6-1989 and the same was also implemented on 29-8-1989. In the circumstances, the rights acquired by the petitioners cannot be nullified on any ground whatsoever without giving them an opportunity to raise their objections. Even under Section 166 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317-F which empowers every Revenue Officer to review the order or decision passed by him or his predecessor, it is mandatory to give an opportunity of being heard to the opposite party before granting review. Since no such opportunity was given to the petitioners at any point of time, the impugned order is liable to be set aside on that ground alone.

Moreover, the specific case of the petitioners is that the objections raised by the 6th respondent regarding deletion of the name of their vendor Khaja Mohammed were once rejected by the Joint Collector and even the Appeal/Revision preferred by him before the Commissioner of Land Revenue was dismissed vide proceedings dated 16.5.1987. It is apparent that the said proceedings were not considered by the District Collector while passing the impugned order dated 9-9-1990.

It is also relevant to note that even the power of review under Section 166 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317-F cannot be exercised without obtaining the sanction of the higher officer as mandated under Section 166 (3) of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317-F. Nothing has been placed before this Court to show that such sanction was obtained before passing the impugned order.

Viewed from any angle, the impugned order dated 9-9-1990 as

well as the consequential order dated 12-12-1990 being arbitrary and illegal cannot be sustained and the same are hereby set aside.

Writ Petition is accordingly allowed. No costs.

2.11.2007.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.35554 OF 1997

2nd November, 2007.

Between:

The Railway Employees Co-operative
House Building Society Limited,
Registered as T.A.B. 129, at Old
F.A & C.A.O's Compound, Opp:L.O.F.P.
Secunderabad, represented by its
Secretary and another. … Petitioners.

And

Government of Andhra Pradesh,
represented by its Principal Secretary,
Revenue Department, Secretariat Buildings,
Hyderabad and others. … Respondents

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